

June 19, 2001

Mr. Rick Maddock  
Chairperson  
Buffalo Valley Special Education Unit Board  
PO Box 10  
Montpelier ND 58472-0010

Dear Mr. Maddock:

The North Dakota Department of Public Instruction (NDDPI) Office of Special Education conducted a Verification Review in the Buffalo Valley Special Education Unit during April 24-25, 2001 for the purpose of assessing compliance in the implementation of the Individuals with Disabilities Education Act (IDEA) and assisting the unit in developing strategies to improve results for children with disabilities. The IDEA Amendments of 1997 (IDEA 97) focus on access to services as well as improving results for children and youth with disabilities. In the same way, the Continuous Improvement Monitoring Process implemented by NDDPI is designed to focus federal, state, and local resources on improved results for children with disabilities and their families through a working partnership among NDDPI, the Buffalo Valley Special Education Unit, parents and stakeholders.

In conducting its review of the Buffalo Valley Special Education Unit, NDDPI applied the standards set forth in the IDEA 97 statute and Part B regulations (34 CFR Part 300), as they were in effect at the time of the review. On March 12, 1999, the United States Department of Education published new final Part B regulations that took effect on May 11, 1999. In planning and implementing improvement strategies to address the findings in this report, the Buffalo Valley Special Education Unit should ensure that all improvement strategies are consistent with the new final regulations.

The enclosed report addresses strengths noted during the review, areas that require corrective action because they represent noncompliance with the requirements of the IDEA, and suggestions for improvements that will lead to best practice. Enclosed you will find an Executive Summary of the report, background information, and a description of issues and findings. NDDPI will work with you to develop corrective actions and improvement strategies to ensure improved results for children with disabilities.

Thank you for the assistance and cooperation provided by the Buffalo Valley Special Education staff and Steering Committee members during our review. Throughout the course of the review, Mark Ehrmantraut, Director of Special Education, school administrators, and staff were very helpful and responsive to requests for information and assistance from NDDPI personnel. Thank you for the continued efforts toward the goal of achieving better results for children and youth with disabilities in North Dakota. Since the enactment of IDEA and its predecessor, the Education of All Handicapped Children Act, one of the basic goals of the law, ensuring that children with disabilities are not excluded from school, has largely been achieved. Today, families can have a positive vision for their child's future.

While schools have made great progress, significant challenges remain. Now that children with disabilities are receiving services, the critical issue is to place greater emphasis on attaining better results. To that end, we look forward to working with the Buffalo Valley Special Education Unit in partnership to continue to improve the lives of individuals with disabilities.

Sincerely,

Robert C. Rutten  
Director of Special Education

cc: Mark Ehrmantraut, Director  
Buffalo Valley Special Education Unit

Enclosure

## **EXECUTIVE SUMMARY**

### **BUFFALO VALLEY SPECIAL EDUCATION UNIT**

The attached report contains the results of the first two phases (Collaborative Review and Verification Review) of the North Dakota Continuous Improvement Monitoring of the Individuals with Disabilities Education Act (IDEA), Part B, in the Buffalo Valley Special Education Unit during the 2000 – 2001 school year. The process is designed to focus resources on improving results for children with disabilities and their families through enhanced partnerships among the North Dakota Department of Public Instruction (NDDPI), the Buffalo Valley Special Education Unit, parents and stakeholders.

Several means were used in the monitoring process to gather data, review procedures and determine the extent to which the Buffalo Valley Special Education Unit is in compliance with federal and state regulations. The Collaborative Review phase of the monitoring process included the completion of a self-assessment by the Buffalo Valley Collaborative Review Team. This team included two parents of students with disabilities, a student with a disability, representatives from both special and general education and community agency representatives. The Buffalo Valley Special Education Unit identified four self-assessment activities as part of its Collaborative Review:

1. All parents, school staff including paraeducators, special educators, general educators, and general education administrators, were surveyed regarding their satisfaction with the Buffalo Valley Special Education Unit. Survey forms were adapted from models supplied by NDDPI.
2. Files of 146 students were reviewed for compliance with the IDEA utilizing a form adapted from one provided in the NDDPI document, *Special Education Monitoring Manual: Collaborative Review Process*. Additional items of concern to committee members were added to the form.
3. Data were gathered and analyzed for all students exiting special education services.
4. Compliance worksheets supplied by NDDPI were used to analyze Buffalo Valley Special Education Unit compliance with the following six basic principles of the IDEA:

*Zero Reject* – This is the requirement that all children with disabilities be provided with a free appropriate public education (FAPE).

*Nondiscriminatory Assessment* – A child with a suspected disability must receive a full, individualized assessment, which meets specific standards, and includes information from a variety of sources.

*Free Appropriate Public Education* – An IEP team, which includes the child's teacher, the child's parent(s), an administrator, and a special education teacher, develops an educational program tailored to meet the child's unique needs.

*Least Restrictive Environment* – To the maximum extent appropriate, children with disabilities should be educated with their non-disabled peers. Placement decisions must be based on the goals and objectives.

*Parent Involvement* – Parents have the right to have access to their child’s educational records; parental consent is required for initial evaluation, reevaluation, and placement; parents must be included in IEP team decisions; and, parents must be notified of their right to appeal.

*Procedural Safeguards* – Procedural safeguards ensure the fairness of educational decisions and include impartial due process hearings; the right to an independent educational evaluation; written notification to parents explaining their rights; parental consent, and appointment of surrogate parents, when needed.

5. Programmatic issues were analyzed by the Collaborative Review Team to ensure that data gathered through the self-assessment were reflective of all schools and services within the unit.

The Verification Review conducted by the ND Department of Public Instruction included an April 24, 2001 on-site meeting with the Buffalo Valley Collaborative Review Team. Interviews with 27 school administrators, general educators, special educators, and related service providers were conducted during April 24-25, 2001. Focused reviews were completed for 12 special education records following the compliance issues reported by the local special education review team in their self-assessment report. Information obtained from these data sources was shared in a meeting on December 14, 2000 that was attended by staff from the Buffalo Valley Collaborative Review Team and DPI verification review team.

The Department of Public Instruction staff members express their appreciation to the administrators, special and general education personnel, students and parents, and other agency personnel in the Buffalo Valley Special Education Unit who participated in the monitoring activities. Their efforts represent a commitment of time and energy without which the multipurpose task of monitoring could not be completed.

This report contains a description of the process utilized to collect data, and to determine strengths, areas of noncompliance with the IDEA, and suggestions for improvement in fully realizing the six basic principles of the Individuals with Disabilities Education Act.

**INDIVIDUALS WITH DISABILITIES EDUCATION ACT, PART B  
COLLABORATIVE REVIEW PROCESS  
REPORT OF THE NORTH DAKOTA DEPARTMENT OF PUBLIC INSTRUCTION  
VERIFICATION REVIEW TEAM,  
TO BUFFALO VALLEY SPECIAL EDUCATION UNIT  
June 4, 2001**

The NDDPI observed the following strengths and areas of noncompliance of the Buffalo Valley Special Education Unit (BVSEU) in its review of desk audit information, the Buffalo Valley Self Assessment Report, student files, and through interviews with Buffalo Valley Special Education Unit staff and administrators.

**Strengths**

- Supportive, and accessible special education unit leadership whose focus is service delivery for students
- Generally strong collaborative efforts between special and general educators
- A commitment to involve parents in a meaningful way in their children's education
- Movement away from magnet schools toward less restrictive environments
- Good relationship with community agencies

**Areas of Noncompliance**

- Inadequate documentation to verify that evaluations were completed, special factors are considered, and that integrated assessment reports included all required components that are essential to make an eligibility determination, particularly when specific learning disabilities are suspected
- Timeliness of completing three year reevaluations
- Content of individualized education programs (IEPs), including annual goals and objectives, characteristics of services, progress reports, and transition planning
- Participation of all required IEP team members
- Evidence of progress reporting
- Extended school year
- Review of the IEP within a 12 month period
- Transfer of rights
- Justification of decisions made in determining the least restrictive environment
- Lack of parent notification and consent for evaluation

BUFFALO VALLEY SPECIAL EDUCATION UNIT MONITORING REPORT  
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## INTRODUCTION

### Background, Administrative Structure, and Children Served

The Buffalo Valley Special Education Unit (BVSEU) consists of six independent school districts: Jamestown, Medina, Montpelier, Pingree-Buchanan, Spiritwood, and Wimbledon-Courtenay. It also serves three private schools in Jamestown: Hillcrest SDA Elementary, Our Savior's Lutheran Elementary, and St. John's Academy. Jamestown School District has developed an alternative high school. BVSEU works with a private residential healthcare facility in Jamestown to provide opportunities for those children to participate in general education to the extent appropriate. The North Dakota State Hospital is within the BVSEU, as well, although its school is entirely within that facility.

The school districts and private schools served by BVSEU have an enrollment of 3514 students (September 2000 data, NDDPI), with the largest, Jamestown, enrolling 2,655. The smallest, Spiritwood, enrolls 14 students.

BVSEU personnel include a director and coordinator, 37 instructional staff and assistants, a school psychologist, and an occupational therapist. Services of other personnel are secured through community and state resources to meet the needs of children with vision impairment, motor impairment, and other disabilities.

### Collaborative Review Process

The Buffalo Valley Special Education Unit began the Collaborative Review process in the spring of 2000 when staff generated a listing of strengths and areas of needed improvement. All students exiting special education services during the spring of 2000 were interviewed. General education and special education staff were surveyed during the spring and summer, along with administrators and ten percent of parents whose children were receiving special education services. During the summer, the remainder of the parents were surveyed. During July and August of 2000, a team of special education staff completed the Desk Audit component of the Self-Study Process, including the review of 25 percent of the student files. During the fall of 2000, meetings were held with five agencies to discuss BVSEU strengths, areas of needed improvement, nature of working relationships, and means to improve the relationships and better support students. The Self Assessment Report noted that a significant population that was not surveyed as part of the process was current students. However, contact with this group will be developed. Following the data collection, results were compiled and reviewed, and the Programmatic Issues section of the Self Assessment Report was completed by the Collaborative Review Team (CRT) which divided into two groups. Priority areas for improvement were identified, along with the direct impact these areas had on student performance.

BVSEU's Collaborative Review Team included the director, coordinator, two parents (one of whom served a dual role of as agency representative), three community agency representatives, two general education administrators, two general education teachers, three special education teachers, and one student. A small contingent of the CRT attended the NDDPI training on the Continuous Improvement Monitoring Process in Bismarck on September 19, 2000. The full team met five half-days to plan activities and review results.

The Self Assessment Report was submitted to NDDPI on March 2, 2001. It describes the planning activities, implementation process, and summary of findings including strengths and needs identified by the CRT. It presents data gathered by student record review, survey information from parents, and general and special education staff, as well as compliance

worksheets used to analyze compliance with IDEA, Part B. The Desk Audit lists special education staff and their credential areas.

NDDPI visited the BVSEU on April 24 and 25, 2001, for the purpose of collecting data to verify information provided through the Collaborative Review process, including new requirements under the IDEA Amendments of 1997. NDDPI staff members initially met with the BVSEU Collaborative Review Team to review the Collaborative Review process and discuss the Self-Assessment Report. NDDPI staff interviewed 27 special and general education staff and administrators. A review of 12 student records was conducted at the unit office. Preliminary results and findings were presented to the CRT in a summary meeting at the end of the Verification Review on April 25.

### Improvement Planning

In response to this report, the BVSEU will develop an action plan including specific improvement strategies addressing areas identified as noncompliant, within 60 days of receipt of this report. The NDDPI regional coordinator assigned to the BVSEU will serve, as needed, as a resource for improvement planning purposes, and will respond in writing to indicate approval of improvement strategies submitted by the unit. The regional coordinator may be contacted for suggested formats to be used for development and documentation of improvement strategies.

### Report Organization

The remainder of this report presents information in each of six areas, which reflect the six principles of the Individuals with Disabilities Education Act (IDEA). They are zero reject, nondiscriminatory evaluation, free appropriate public education, least restrictive environment, parent involvement, and procedural safeguards. Each section describes strengths and concerns reported in the BVSEU Self Assessment Report; areas of strength identified by the NDDPI verification review team through interviews and student file review, and other sources; areas of noncompliance; and suggestions for improved results for children.

It should be noted that as a general rule, noncompliance will be cited when a violation is found in 15 percent or more of the student files or other review data. However, some violations are considered so serious as to be cited if even one incident is noted. Violations of this nature include, for example, not conducting an assessment before placement, or lack of evidence of parent consent.

Suggestions for improved results for children do not require a formal response from the unit. However, the NDDPI encourages the Buffalo Valley Special Education Unit to consider the suggestions for further study as a means of strengthening the system of services to children with disabilities.

## I. ZERO REJECT

*All children with disabilities, and those who are in need of special education and related services, must be identified, located, evaluated, and provided with a free appropriate public education.*

As part of the BVSEU Self Assessment Report, general and special education staff and administrators were asked if they felt their school had sufficient prereferral interventions and support services available to maintain at-risk students within general education programs. Approximately 80 percent of the general education staff and 82 percent of the administrators completing the self-assessment surveys agreed with this statement. Approximately 81 percent of



the parents agreed that other options within general education were tried or considered before their child was referred for special education services. In contrast, only approximately 54 percent of the special education staff agreed that sufficient prereferral interventions and support services were available. Further, on the Self Assessment file review, 67 percent of the files of students who had learning disabilities documented that instruction appropriate to age and ability level was provided prior to initial assessment as required under IDEA. Relatedly, 69 percent of all files reviewed reported that the assessment team reviewed existing BLST, Section 504 or other data; this low percentage may be due to either lack of such data or to failure to follow the unit's established procedures. The Programmatic Issues section of the BVSEU Self Assessment Report, responses for which were developed by two separate groups of the Collaborative Review Team, yielded mixed results, with one indicating that sufficient prereferral interventions and support services were available, while the other group felt that sufficient data were not available to make that judgment.

During the interviews that NDDPI conducted as part of the verification review, respondents were asked to "Describe the BLST (Building Level Support Team) activities in your school." Further probes included questions regarding consistency of team membership, team function, notification of parents, team record keeping procedures, and the time line from BLST assistance to the time of referral for a special education evaluation. Several years ago, training on the BLST process was a major emphasis of personnel development in the largest school district within the BVSEU, which may account for interview results. Those interviewed were knowledgeable of the process, which is generally viewed as effective over time and involving parents. Some variability among schools was noted, however, with the building administrator considered as vital to a strong BLST effort. It was reported that one member school district periodically rotated teachers and administrators among schools. This was believed by some to have a detrimental effect on BLST functioning since time was needed to establish and organize the new teams, and build trust among the members. The disruption was assumed to negatively impact students as well, since transferred staff who knew a child well were not readily available to assist in problem solving.

In addition, the NDDPI verification review team examined student files to determine if information on general education interventions prior to referral to special education was included. The NDDPI results were consistent with those reported by the BVSEU internal monitoring team during the self-assessment.

Finally, the BVSEU is obligated to identify students who may have disabilities and are at risk of dropping out of school. It was noted that no consistent mechanism was in place to ensure that the BVSEU director was notified by school administrators when a student decided to dropout of school. Consequently, offers for evaluation, referral to appropriate community agencies, and other services are not necessarily made known to students who dropout of school.

Statewide, 12.3 percent of students exiting special education services did so because they have dropped out (May 2000 data). BVSEU reports that of its students with disabilities who were exiting school during the spring of 2000, 10 percent dropped out. This compares favorably to the statewide data. However, there is some concern when comparison are made with general enrollment. Within BVSEU, 48 (4.1 percent) of the 1156 public high school students in member school districts were reported to have dropped out. Caution must be exercised in interpreting these statistics due to the possibility of reporting procedure errors.

### STRENGTHS

The BLST process is in place in BVSEU schools and is viewed generally as valuable in assisting teachers to develop intervention strategies that meet the needs of children.

## SUGGESTIONS FOR IMPROVED RESULTS FOR CHILDREN

Through interviews, it was noted that while the BLST procedures are in place in all schools, they may be applied inconsistently due to various factors, such as grade level of school (i.e., elementary, middle school, high school) or composition of staff. However, the building principal is the key player in establishing and maintaining a strong and consistent process. NDDPI provides ongoing training and support, along with a recently revised BLST manual (January 2000) to school districts in the state as they develop local BLST policies and procedures. In addition, NDDPI strongly encourages continued skill development in classroom interventions, with attention to individualized personnel development for instructional staff.

NDDPI encourages the BVSEU to study the effectiveness of the BLST process in terms of increased skill level of instructional staff, nature and extent of support services required over time, time elapsed from referral to BLST to referral for a special education evaluation, identified incidence of disability, and other outcomes. Examining the BLST process will require consistency across schools, particularly in terms of nature and extent of training provided, information collected, and other factors.

Despite indications of use of BLST, documentation is limited, particularly as student data are reviewed when planning a special education evaluation. NDDPI encourages a close examination of how documentation occurs at each school. Also, attention should be given to the standards used by BVSEU's file reviewers during the Self Assessment Process in determining whether documentation was sufficient.

Expand and refine components of the BVSEU internal monitoring process to address the IDEA principle of zero reject for children with disabilities.

Examine the practice of rotating teachers from school to school to determine its impact on BLST functioning, and on timelines and effectiveness of interventions related to student achievement and behavior.

Develop procedures whereby students at risk of dropping out of school, as well as those who have announced their intention to do so, are made known to the BVSEU by school administrators and/or personnel so that appropriate services may be offered. Relatedly, establish a database so that factors contributing to noncompletion of school can be determined and addressed.

Examine the reasons for the apparently significant difference of perceptions between general education administrators and teaching staff compared with that of special educators relative to the availability and effectiveness of general education strategies that precede referral for special education evaluation.

## II. NONDISCRIMINATORY EVALUATION

*Any child with a suspected disability must receive a full, individualized evaluation which meets specific standards and includes information from a variety of sources.*

The BVSEU internal monitoring team found that a significant number of student files fell below the 85 percent level of compliance with regard to several specific evaluation requirements. After reviewing the results of the student file review, surveys, and programmatic issues, the BVSEU Collaborative Review Team identified the following required components of the evaluation process as areas of concern: documentation of parent involvement in the evaluation process,

various components of the Integrated Written Assessment Report, justification concerning evaluation, and use of a variety of tools and strategies that would be helpful in planning for progress in the general education curriculum.

During interviews conducted by the NDDPI verification review team, staff and administrators were asked to describe the evaluation planning process. Further probes included questions regarding: involvement of parents in the evaluation process; completion of the student profile and assessment plan; discussion of student interests and preferences; who makes the decision whether the child has a disability; assessment in all areas of suspected disability; and contribution of general education teachers to the evaluation process.

Analysis of NDDPI's student file review and interviews generally verify the conclusions identified in the BVSEU Self Assessment Report.

The NDDPI verification review team examined statistics related to incidence by school building, ethnicity, and disability. In BVSEU, 548 of the member school districts' 3514 students (2000-2001 data), or 15.5 percent, are receiving special education services. A steady increase has been recorded since 1995-96 (12.2, 12.4, 13.2, 14.9, 15.7, and 15.59 the 15.5, respectively at a time when overall enrollment decreased. The 15.5 percent compares to a statewide incidence rate of disabilities of 11.6 percent in 2000-2001. Variations in incidence rate among disabilities are noted. The absolute number of children with emotional disturbance doubled (from 29 to 60) over six years, presently accounting for 10.9 percent of all children receiving special education services in BVSEU. Similarly, the absolute numbers of children with specific learning disabilities has steadily increased, now accounting for 53.6 percent of children receiving services. Dramatic increases and decreases are noted in some disabilities, notably speech impairment. Statistics reveal that significant increases *as well as decreases* in absolute numbers and percentages are evident in specific schools in the BVSEU.

The BVSEU Collaborative Review Team identified a need to implement a system to monitor representation of students from various cultures. The CRT indicated that data were lacking regarding ethnicity (ND Performance Goal 7) and identified a need to obtain it. However, these data are available. Statistics show wide variation among ethnic groups. The percentages of BVSEU public school children identified as having a disability, by ethnicity, are: Caucasian – 15.6; Hispanic – 8.3; Black – 33.3; Asian – 9.6; and American Indian – 18.1. These figures were calculated by dividing the number of children having a disability in each ethnic group by the total number of children in that ethnic group. Statewide, the percentages of children identified as having a disability, by ethnicity, calculated in the same manner, are: Caucasian – 11.4; Hispanic – 17.0; Black – 11.4; Asian – 4.6; and American Indian – 13.8. Caution must be observed in interpreting these statistics due to the small numbers of minority children involved.

### STRENGTHS

There is increased awareness of the need to involve parents during both the BLST and evaluation processes, and the benefits that result. Typically, all the individuals who need to be involved in the evaluation process are participating.

Special and general education staff are generally very knowledgeable about the evaluation process, including steps to follow if additional data are not needed for a reevaluation.

## AREAS OF NONCOMPLIANCE

### Initial Evaluation

34 CFR 300.531 requires that a full and individual initial evaluation be conducted before the initial provision of special education and related services. This regulation requires 100 percent compliance. The NDDPI verification review team concurs with the BVSEU internal monitoring team that this is a compliance issue, based on student file review that found evidence of such an evaluation lacking in some cases.

### Evaluation Procedures

34 CFR 300.532 identifies a number of requirements that must be met to assure that an evaluation utilizes reliable and valid procedures to determine whether the child has a disability. The requirements address nondiscriminatory tests and materials, administration in the native language, multiplicity of tools and strategies to gather functional and developmental information that is relevant in determining the educational needs of the child, and comprehensiveness of the evaluation. Several of the requirements were introduced with IDEA '97, although all are included in the 1999 NDDPI publication *Guidelines: Evaluation Process* which is followed by BVSEU. The BVSEU internal monitoring team found that several of the requirements were not met. The NDDPI verification team concluded similarly.

The BVSEU internal monitoring team also checked student files to determine the presence of a Student Demographics form, Student Profile, Assessment Plan, and Integrated Written Assessment Report. The latter reached 85 percent compliance, while the preceding three did not. The NDDPI verification team found all four documents in fewer than 85 percent of the student files reviewed. The Integrated Written Assessment Report is particularly critical, as it presents an analysis of all relevant evaluation data and identifies whether the child has a disability.

### Determination of Needed Evaluation Data

34 CFR 300.533(a) includes the requirement that review of existing data (such as evaluations and information provided by the parents; current classroom-based assessments and observations; and observations by teachers and related service providers) and input from parents be used to identify additional data needed to determine whether the child has a disability, the present levels of performance and educational needs of the child, whether the child needs special education and related services, and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the IEP of the child and to participate, as appropriate, in the general curriculum. If no additional data are needed, parents are to be notified, along with information that parents can still request an evaluation. The BVSEU internal monitoring team reviewed files for these requirements and found that much of this information was lacking in many files. The verification review team concurs regarding the student file review findings. However, the results of interviews conducted with educators and administrators support the view that although the information is not adequately documented, it likely is being addressed by evaluation teams.

### Determination of Eligibility

34 CFR 300.534(a)(2) requires that the school must provide the evaluation report and the documentation of determination of eligibility to the parent. The BVSEU internal monitoring team found documentation that parents received the report in only ten percent of the cases reviewed. While the NDDPI verification review team found documentation in a somewhat higher percent of the files, it was well below the level of compliance.

34 CFR 300.534(b)(1) requires that a child may not be determined to be eligible if the determinant factor is either lack of instruction in reading or math; or Limited English

proficiency; and the child does not otherwise meet the eligibility criteria. This requirement became effective with the reauthorization of IDEA in 1997 and was not reviewed during the NDDPI visit five years ago. The BVSEU internal monitoring team found that this requirement was met in only a little over one-half of the cases. The NDDPI verification review team confirmed that documentation that this requirement had been met was often lacking in student files.

Procedures for determining eligibility and placement 34 CFR 300.535(a)(2) requires that in interpreting evaluation data to determine if a child has a disability, as well as the child's educational need, the team must ensure that all the data are documented and carefully considered. This is accomplished through an Integrated Written Assessment Report (IWAR). The BVSEU internal monitoring team determined that this assessment report was not always present in the student file to verify that the evaluation had occurred and the conclusion of the team. The NDDPI verification review team found both to be compliance issues, with the disability clearly identified only 80 percent of the time.

Further, there is the concern that the essential feature of integrating results from various sources is not always present. Instead, the IWAR is often simply a restatement of information written by individual evaluators in their reports. It was noted that elements of the IWAR are copied into the present level of educational performance in the IEP as well.

#### Reevaluation

34 CFR 300.536 states that a reevaluation of each child is conducted if conditions warrant a reevaluation, or if the child's parent or teacher requests a reevaluation, but at least once every three years. The BVSEU internal monitoring team reviewed files with regard to this requirement, as well as to determine documentation if no additional information was needed at reevaluation time. The BVSEU team found compliance just below the 85 percent level. Based on a relatively low percentage of timely reevaluations during the previous monitoring, NDDPI reviewed student files for documentation and concurred with the BVSEU internal monitoring team that this requirement remains a compliance issue. Also, a current evaluation was not found in some files reviewed by NDDPI verification review team.

#### Additional Requirements for Evaluation Children with Specific Learning Disabilities

34 CFR 300.540 - 300.543 describe the additional requirements the school must follow when evaluating a child suspected of having specific learning disabilities, including specific components that must be part of the Integrated Written Assessment Report. During the NDDPI monitoring five years ago, these requirements, in general, were compliance issues. The BVSEU internal monitoring team found a low level of compliance for each requirement, with the least documentation of those requirements related to need for observation. The verification review team found similar deficiencies.

#### SUGGESTIONS FOR IMPROVED RESULTS FOR CHILDREN

Conduct a study to identify patterns and trends related in evaluation (i.e., incidence rates), disaggregating data by disability and school building of residence. Use this information to pinpoint procedures, staff or child characteristics that may account for over-identification or under-identification. For example, the absolute number of children with disabilities increased by 57 between 1997 and 1998. Of the 57, 39 were identified as being in one disability category, with two schools accounting for 22 of the 39.

Review the BVSEU Policies and Procedures Handbook to ensure that compliance issues identified under Nondiscriminatory Evaluation are addressed in policies, procedures and forms

(including instructions in their use). Reference to *Guidelines: Identification and Evaluation of Students with Specific Learning Disabilities* (Fall 2000) should be included.

Expand and refine components of BVSEU's internal monitoring process to include requirements that ensure nondiscriminatory evaluation for children with disabilities.

The director reported that during the 2000-2001 school year, teachers of students with specific learning disabilities have been brought together periodically to discuss application of consistent eligibility criteria during evaluation of students suspected of having that disability. The concern regarding inconsistency was justified, based on student file review and the large caseloads within the unit. It is recommended that the BVSEU provide continued opportunities for special education staff to discuss *Guidelines: Identification and Evaluation of Students with Specific Learning Disabilities* (Fall 2000), with particular attention given to developing and implementing consistent criteria for identification.

Provide opportunities for staff to discuss means of documenting information considered by the evaluation team, as well as discussions (including justification) made.

### III. FREE APPROPRIATE PUBLIC EDUCATION (FAPE)

*An IEP team, which includes the child's teacher, the child's parent(s), an administrator, and a special education teacher, must develop an educational program tailored to meet the child's unique needs.*

The BVSEU Report identified several areas of concern related to the provision of free appropriate public education (FAPE) and development of an individualized education program (IEP) that includes specific required elements. These are, as identified through BVSEU's internal monitoring of files: participation of all required IEP team members; attention to all relevant domains in the present level of education performance; completeness of goals, short term objectives, and characteristics of services; justification for extended school year; review of progress at the annual IEP meeting; justification of placement in the least restrictive environment; statement of agency coordination and responsibilities (transition); and statement of participation in physical education. Active involvement of parents throughout the IEP process reached but did not exceed the 85 percent level of compliance. For many IEP components, such as annual goals, BVSEU's internal monitoring determined whether a component was present, but did not apply standards that would measure quality of what was written. Through surveys, 82 percent of the general education teachers indicated that they actively participated in IEP development.

The Collaborative Review Team (CRT), working as two separate groups, considered whether the following ND Performance Goal had been met: appropriate modified grade level instructional materials based on the general education curriculum are available for all special education students and are used for all instructional, related and support staff. The two groups disagreed whether the goal was met within BVSEU.

The BVSEU has adopted the *Guidelines: Individualized Education Program Planning Process* (8-1-99). IEP development has occurred using computer software. However, this was to be discontinued at the end of the 2000-2001 school year, and a form of the NDDPI template software will be implemented instead.

The NDDPI verification review team interviewed staff and administrators regarding the IEP planning process. Specific probes addressed: documentation; present levels of performance; goals and objectives; characteristics of services, adaptations, and assistive technology; student progress; extended school year; participation in statewide assessment; behavior interventions; transition services; collaboration between general and special education staff; and evaluating the effectiveness of special education programs and services.

In general, staff and administrators understood the IEP process and could describe it accurately. Some components of the IEP were not consistently understood, however. In other cases, IEP components were generally described with accuracy, but the documentation in IEPs in student files was not always consistent with the oral description. These situations are described below under Areas of Noncompliance.

### STRENGTHS

The availability of a transition learning center, along with the knowledgeable personnel devoted to transition, strengthens services for secondary level students with disabilities.

### AREAS OF NONCOMPLIANCE

#### Current IEP

34 CFR 300.342(b) and 300.343(b)(1) require that an IEP must be in effect before special education and related services are provided, and that the IEP must be reviewed not less than annually. The NDDPI verification review team found several files in which the review had not occurred within the 12 month requirement, and identified this as a compliance issue.

#### IEP Team

34 CFR 300.344 identifies members of the IEP team. These include the parents of the child; at least one general education teacher of the child; at least one special education teacher of the child; a representative of the school district; an individual who can interpret instructional implications of evaluation results; other individuals who have knowledge or special expertise regarding the child; and the child, as appropriate. The NDDPI verification review team concurs with the BVSEU internal monitoring team finding that not all required team members were involved, and identified this as a compliance issue. Most likely to be absent were the LEA representative (administrator or designee) or a general education teacher. The critical role of the general education teacher is underscored by a related regulation (34 CFR 300.356(d)) that requires participation in IEP development, review and revision to assist in determining appropriate positive behavioral interventions and strategies for the child, and supplementary aids and services, program modifications or supports for school personnel that will be provided for the child.

#### Development, review, and revision of IEP (special factors)

34 CFR 300.346 requires consideration of special factors, including behavior that impedes a child's learning or that of others; limited English proficiency (LEP); and need for assistive technology. BVSEU internal monitoring addressed positive behavior intervention and strategies for students with emotional disturbance. Although less than 85 percent of the files addressed this need, the CRT reviewers of ND Performance Goal 25 felt that the goal had been met. However, the NDDPI verification review team found this to be a compliance issue. LEP and assistive technology were not addressed in the BVSEU internal monitoring of files. The two CRT groups reviewing ND Performance Goals disagreed regarding preparation of staff to meet the needs of LEP students with disabilities.

NDDPI review found the special factors requirement to be a compliance issue. Similarly, in considering ND Performance Goal 24 the two CRT groups disagreed. This goal deals with training on the benefits and range of assistive technology available. Interviews with staff and administrators appeared to indicate that assistive technology is discussed at the IEP and that training is generally available. However, in surveys conducted as part of the Self Assessment Study, only 75 percent of general educators, and 72 percent of special educators agreed that students had necessary adaptive equipment. Among administrators, 81 percent agreed that their district provides/maintains specialized equipment and assistive devices and trains staff in its use.

#### Annual Goals and Short Term Objectives

34 CFR 300.347(a)(2) states that annual goals and short-term objectives related to the child's needs must be included in the IEP. The NDDPI verification review team concurs with the BVSEU internal monitoring team in their finding that all IEPs had goals and objectives. Although markedly improved since the NDDPI review five years ago, the annual goals and short-term objectives remain a compliance issue due to incomplete documentation as described earlier in this section. Most likely to be absent from goals was a desired ending level, and some, as written, did not appear to be reasonably attainable in a year. Short-term objectives were found to be a compliance issue by both the BVSEU internal monitoring team and the NDDPI verification review team. Components most often lacking were evaluation procedures and schedules.

34 CFR 300.347 (b) sets forth requirements related to transition planning at the secondary level. This includes the requirements to state transition service needs beginning at age 14, include transition needs as goals and objectives within the IEP, and determine student interests, needs and preferences in transition planning. The BVSEU identified the last item as a compliance issue, while the NDDPI verification review team identified the first two as compliance issues. Interviews by the NDDPI team revealed that initiating transition planning at age 14 was not consistently done.

#### Progress Reporting

34 CFR 300.347(a)(7) requires that the IEP include a description of how annual goals will be measured, and how the parents will be regularly informed at least as often as parents are informed of their nondisabled children's progress toward nondisabled children's progress, of the child's progress toward annual goals, and the extent to which progress is sufficient to enable the child to achieve the goals by the end of the year. The BVSEU internal monitoring team did not identify this as a compliance issue, although a lack of documentation that progress was reviewed at each IEP was noted. Through NDDPI interviews, it appeared that staff understood the requirements and provided such progress reports. However, the files reviewed by NDDPI lacked consistent evidence of progress reporting and this was identified as a compliance issue. It is suspected that reporting probably does occur, but that staff do not forward copies of these reports in a timely manner to the BVSEU central office for inclusion in the student files, as required by BVSEU procedures.

#### Provision of Special Education and Related Services

34 CFR 300.347(a)(6) requires that the IEP include the projected date for the beginning of services, and the anticipated frequency, location, and duration of those services and modifications. This requirement was reviewed by the BVSEU internal monitoring team and not identified as an area of concern. However, a sample of student files were examined regarding the requirement by the NDDPI verification review team because it was a compliance issue in a previous monitoring. Results of this review found that this requirement continues to be a compliance issue.



### Physical Education

34 CFR 300.307 requires that physical education services must be made available to every child with a disability. The BVSEU internal monitoring team identified this as a compliance issue, although the NDDPI team found all files reviewed in compliance, consistent with monitoring findings five years ago.

### Extended School Year

34 CFR 300.309 requires that extended school year services be provided as necessary. The BVSEU internal monitoring team identified this as an issue, and the Self Assessment Report indicated that ESY is a priority for improvement. During interviews, three staff reported not having received the NDDPI guidance document on extended school year. It appears that ESY may be equated by some staff with a place and set of services (i.e., “this school doesn’t have ESY services; that’s at ‘x’ school”). NDDPI review of files found that the ESY item was usually checked, but the justification for the team decision was typically not clear. ESY was identified as a compliance issue.

34 CFR 300.520 sets forth requirements related to discipline of students with disabilities, including procedures to ensure FAPE. Through interviews, it was determined that procedures followed at one secondary school relating to students with disabilities, were the same as for all students. This is a compliance issue.

### SUGGESTIONS FOR IMPROVED RESULTS FOR CHILDREN

Continue training opportunities for staff regarding IEP components, including opportunities for small groups to jointly review and discuss areas that are problematic. Individualize assistance as necessary, using staff who are highly skilled in various areas to mentor others.

Expand components of BVSEU’s internal monitoring process to include requirements that ensure a free appropriate public education for children with disabilities.

Consult with the NDDPI regional coordinator to determine the nature and extent of discrepancies between findings of the BVSEU internal monitoring team and the NDDPI verification review team.

## IV. LEAST RESTRICTIVE ENVIRONMENT (LRE)

*To the maximum extent appropriate, children with disabilities must be educated with their nondisabled peers. Placement decisions must be based on the goals and objectives in the child’s IEP.*

The BVSEU Self Assessment Report identified the need to improve means of ensuring that students with disabilities are accessing the general education curriculum to the maximum extent. The BVSEU Collaborative Review Team (CRT) utilized internal monitoring findings and surveys to arrive at their conclusions. Internal monitoring identified characteristics of service (on the individualized education program), justification for least restrictive environment, and educational placement outside a child’s home school as falling below the 85 percent level of compliance. Surveys of staff and administrators identified a need for greater support to students with disabilities through support to teachers; only 64 percent of general educators and 85 percent of special educators felt they had the necessary skills to provide such support. When asked if they had received adequate training, information and material, and personnel supports to implement each student’s IEP, only 56 percent of general educators and 81 percent of special

educators agreed. It is interesting to note that while 100 percent of the administrators and 93 percent of general education teachers agreed that general education staff modified and adapted curriculum to meet the needs of students with disabilities, only 71 percent of special educators believed that.

The above data were considered by the CRT in determining extent to which BVSEU met various North Dakota Performance Goals. The CRT concluded that the following LRE related Performance Goals are met: modification of curricula and materials (ND Performance Goal 3); use of modified curriculum and creative instructional approaches to increase integrated placements of students with disabilities (ND Performance Goal 18); and documentation that reflects a discussion of the impact of cultural and linguistic factors when developing the IEP (ND Performance Goal 21). The two groups of the CRT that were considering the data could not reach agreement, or determined that more data were needed regarding the following LRE related ND Performance Goals: development of behavioral plans, functional behavioral assessments, and behavior interventions (ND Performance Goal 6); acquisition and use of appropriate modified grade level instructional materials based on the general education curriculum (ND Performance Goal 13); and development of materials and instruction designed to address cultural and linguistic need for limited English proficient students with disabilities (ND Performance Goal 22).

The BVSEU Collaborative Review Team indicated that data were needed to determine comparability of general and special education students in statewide testing (Performance Goal 2). These data are available. The statewide average for participation of students with disabilities is 88.1% (1991); BVSEU school districts reported rates of 100, 100, 100, 92.9. and 85.5 percent. With regard to ND Performance Goal 1, performance on statewide testing is available, by school district and for students with disabilities, at <http://www.dpi.state.nd.us/dpi/reports/profile/9900/perform/47001.htm>

Because of concerns identified in a previous monitoring, NDDPI reviewed student files regarding characteristics of services, and justification of placement (options considered, selected and rejected). Interviews conducted with staff and administrators by the NDDPI verification review team revealed familiarity with the requirement to discuss characteristics of services as well as the continuum of services, and that IEP teams of which the interviewees were members generally engaged in these discussions. However, it was also evident that the concept was not completely understood by all staff. File review by the NDDPI team found characteristics of services and justification of the placement (LRE) decision to be a compliance issue. For example, in more than one file, options were listed, one of which was “no special education services.” If a child is determined to have a disability and needs special education and related services, providing none is not an option along the continuum of services that can be considered.

The NDDPI verification review team asked staff and administrators how general education teachers are supported when students with disabilities are in their classrooms. Responses indicated a generally high level of support. Lesser support was noted only at specific grade levels or buildings. Similarly, when asked about the extent to which general educators make adaptations and modifications for students with disabilities, teachers in some buildings appeared more willing to do so. Some general education staff indicated that additional training related to disabilities was desirable.

Hampering decisions regarding least restrictive environment in the BVSEU is lack of physical accessibility and adequate space in some schools which prevent some students with disabilities from participating with nondisabled peers and accessing programs/services in an appropriate location. There appears to be a movement away from what was termed “magnet schools,”

although some interviewees thought the need for the special education classroom space to be used for general education classrooms may be a factor that hastens the shift as much as is philosophical change.

The BVSEU Self Assessment Report did not indicate that a review of data from *Least Restrictive Environment Data Comparisons 1993 vs. 1997* (NDDPI, June 1998) had been undertaken. The NDDPI team reviewed these data, along with that from the 1999-2000 school year, the most recent that are available. Data reveal a significant positive movement toward including children with disabilities in less restrictive environments. One set of data report whether students with mental retardation or emotional disturbance received services in their school of residence (neighborhood school) or another school. For students with mental retardation, the following percentages received services in their neighborhood school in 1993, 1997, and 1999: 49 percent, 83 percent, and 90 percent, respectively. For students with emotional disturbance, the percentages are: 62 percent, 87 percent, and 100 percent.

The second set of data from the *Least Restrictive Data Comparison* publication, along with 2000 information, provides information on settings in which services are delivered. These settings include general education classroom, resource room, or separate classroom, and all other settings. For students with mental retardation, the percentages that received services in general education classes in 1993, 1997, and 2000 were 8 percent, 10 percent, 11 percent, respectively. For those same years, the resource room provided services for 19 percent, 61 percent, and 53 percent, respectively. A separate classroom setting served 68 percent, 29 percent, and 34 percent, respectively. Finally, all other settings (e.g., separate facilities) served 3 percent and 0 percent in 1993 and 1997, respectively. None of the students with mental retardation received educational services in separate facilities in 2000.

For students with emotional disturbance, the percentages that received services in the general education classes in 1993, 1997, and 2000 were 69 percent, 81 percent, 85 percent, respectively. For those same years, the resource room provided services 26, 10, and 6 percent, respectively. Finally, a separate classroom setting served 3, 5, and 1.6 percent, respectively.

Staff and administrators were asked to describe the nature of collaborative efforts between general and special education teachers, as well as modifications and adaptations made to the general education curriculum to meet the needs of students with disabilities. Staff and administrators generally presented a positive, mutually supportive relationship, with the needs of children as a focus. Interviews in one school suggested less interest in the part of teachers to work together. Lack of common planning time was cited as a constraint to closer collaboration.

## STRENGTHS

Special education staff are generally viewed as very supportive and willing to work with colleagues to improve the education of children with disabilities. Many examples of mutual support among teachers was noted.

Over time, BVSEU has significantly increased the percentage of students who participate more fully within the general education classroom.

## AREAS OF NONCOMPLIANCE

### General LRE Requirements

34 CFR 300.550 requires that, to the maximum extent appropriate, children with disabilities are educated with children who do not have disabilities. In addition, removal of children with disabilities from the general education environment may occur only when the nature or severity

of the disability is such that education in general classes, with the use of supplementary aids and services, cannot be achieved satisfactorily. Through student file reviews, the NDDPI verification review team determined that documentation of LRE discussions was incomplete.

#### SUGGESTIONS FOR IMPROVED RESULTS FOR CHILDREN

Expand internal monitoring to ensure that a range of placement options are considered for each child annually, the most appropriate option is selected, and the decision-making process is documented in the IEP.

Using Child Count data, conduct further analysis of data related to LRE options and placement for various disabilities and buildings, as well as across the unit, to determine patterns of placement and to identify factors that may influence decisions made by IEP teams.

Provide opportunities for small groups of staff to discuss required components of characteristics of services and LRE justification. Use staff who demonstrate advanced proficiency in LRE decision-making to assist their colleagues in working through and documenting the process.

Study further the discrepancy in perceptions between special educators and other groups surveyed regarding extent to which general education staff modify and adapt curriculum to meet the needs of students with disabilities. Plan actions based on study conclusions.

#### V. PARENT INVOLVEMENT

*Parents have the right to have access to their child's educational records. Parental consent is required for initial evaluation, reevaluation, and placement. Parents must be included in IEP team decisions, and parents must be notified of their right to appeal.*

The BVSEU Self Assessment Report summarized responses from parent surveys conducted as part of the Collaborative Review process. Parents of children who receiving special education services (540) were surveyed, with 195 (36 percent) responding to the survey. Overall, responding parents reported a high degree of satisfaction with their involvement with the school, with at least 95 percent in agreement with statements regarding invitations to participate in school activities, feeling welcome at their child's school, understanding what is discussed at the evaluation and IEP meetings, and comfort in asking questions and expressing concerns. The one area indicating less involvement was opportunity to work with the school to develop and evaluate policies and programs through local planning committees; approximately 76 percent agreed with that statement. During conversations between BVSEU and community agency personnel, the need to increase parent involvement was noted as a means of improving student progress. Agency personnel noted that students are better served when adults avoid "turf" issues and focus on students.

Considering the above information, the two CRT groups completing the Programmatic Review concluded that families and communities are fully involved with schools and school improvement efforts (ND Performance Goal 9). However, there was no consensus regarding Performance Goal 27: that the SEU and local districts have implemented procedures and strategies to foster participation of parents of students with disabilities in the classroom and in other school activities including building and district level school improvement teams.

Both the BVSEU internal monitoring team and the NDDPI verification review team confirmed that parent participation in IEP development was very high, and that when a parent was not

present at an IEP, evidence of attempts to persuade the parent to attend was generally provided.

During interviews conducted by the NDDPI verification review team, school personnel were asked to describe the extent to which parents are involved in evaluation, IEP meetings, and unit trainings. Responses were consistent with information obtained from student file review, the Self Assessment Report, and other sources.

Parent involvement in the evaluation process is addressed in an earlier section of this report entitled Nondiscriminatory Evaluation.

### STRENGTHS

Parents are generally quite involved and concerned with their children's education. Staff are making increased efforts to involve parents in prereferral, evaluation, and IEP development.

### SUGGESTIONS FOR IMPROVED RESULTS FOR CHILDREN

Consider a variety of means by which parents can be meaningfully involved in policy development and program evaluation activities. Collaborate with community agencies and organizations to identify parent issues.

NDDPI is aware of open enrollment issues within the BVSEU. Use appropriate methods to solicit input from families and students to identify reasons for exercising this option, as well as actions that need to be taken to increase their satisfaction.

## VI. PROCEDURAL SAFEGUARDS

*Procedural safeguards, which ensure that fairness of educational decisions, include impartial due process hearings; the right to an independent educational evaluation; written notification to parents explaining their rights; parental consent; and appointment of surrogate parents, when needed.*

The BVSEU Self Assessment Report identified three areas of concern: parent consent for evaluation; parent prior notice; and evidence of evaluation prior to evaluation.

The NDDPI verification review team reviewed student records in these areas, consent for reevaluation, and consent for placement (which require 100 percent compliance), as well as requirements relating to informing students at age 17 that rights would transfer to them at age 18, and transfer of rights at age 18. The former requirement was imposed under IDEA 97 and was not monitored previously.

### AREAS OF NONCOMPLIANCE

#### Prior Notice

34 CFR 300.503(a) states that written notice must be given to the parents of a child with a disability a reasonable time before the public agency: proposes to initiate or change the identification, evaluation or educational placement of the child or the provision of a free appropriate public education (FAPE) to the child; or refuses to initiate or change the identification, evaluation or educational placement, or the provision of FAPE. The NDDPI verification review team concurs with the Buffalo Valley Self Assessment Report that prior notice for evaluation is a compliance issue. However, prior notice related to the most recent IEP meeting is not a compliance issue.

### Parent Consent

34 CFR 300.505(a) requires that informed parent consent must be obtained before conducting an initial evaluation, reevaluation, or initial provision of special education and related services to a child with a disability. Consent is a critical requirement and must reach 100 percent compliance. The BVSEU internal monitoring team reviewed student records to determine if consent to evaluate was documented and identified that some files lacked such evidence. The NDDPI verification review team examined student records to locate consent for evaluation, reevaluation, and initial placement since all require 100 percent compliance. None of the three met that requirement. In contrast, several files contained multiple consent forms for “initial” placement, even when the student had continuous service. The NDDPI verification review team concurs with the BVSEU Self Assessment Report that parent consent is a compliance issue.

### Transfer of Rights

34 CFR 300.517 requires that rights afforded parents under IDEA transfer to the student at the age of majority (age 18 in ND), and that parents and the student be notified of the transfer of rights. Further, under 34 CFR 300.347 (c), there must be evidence in the IEP at least one year prior, that the transfer of rights will occur. Both requirements were identified by the NDDPI verification review team as compliance issues.

### SUGGESTION FOR IMPROVED RESULTS FOR CHILDREN

Refine the BVSEU internal monitoring system to include components that will ensure 100 percent compliance to IDEA requirements relating to parent consent, transfer of rights, and other procedural safeguards.